

A Tale of Two Policies

Student's assault case caught between old, new guidelines

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After The New School ruled that there was not enough evidence to determine whether Lang sophomore Jennifer Kaplan was sexually assaulted in her Stuyvesant Park dorm last January, Kaplan decided that she would use the administrative processes available to her and appeal the decision. She scheduled a meeting with administrators at Student Services with the intention of informing them of her appeal.

But when she met with Senior Vice President for Student Services Linda Reimer in April, Kaplan learned that there was a problem: under The New School's sexual assault policy at the time, only the accused party had the right to appeal a decision made by the university.

"I went to my appeal meeting, and [they] informed me that I could not appeal the case," Kaplan recalled.

The scenario at the time left Kaplan with little recourse for action — until she heard about the formal complaint that 16 Yale University students and alumni had filed with the Department of Education's Office for Civil Rights in March.

The complainants alleged that Yale had provided an "inadequate response" to multiple instances of sexual misconduct that had occurred on campus, according to the *Yale Daily News*. As a result, the OCR opened an investigation into Yale's potential "failure to eliminate a hostile sexual environment on campus," according to a press release by the complainants. The investigation would look into whether or not Yale had violated Title IX, the federal law prohibiting gender discrimination from any education program receiving federal financial assistance.

After hearing about the Yale case and consulting with a professor, Kaplan decided to take her own action against The New School.

"When the whole thing about the Yale students hit the press, [the professor] said 'I think you should do this,'" Kaplan said.

Kaplan proceeded to file a complaint with the Office for Civil Rights against The New School. Over the next four months, the OCR investigated Kaplan's claims — five separate allegations — that the university had violated Title IX and "discriminated on the basis of sex," according to a Department of Education letter sent to Kaplan on May 23. The Office for Civil Rights attorneys assigned to Kaplan's case, Ronald L. Scott and Miriam Numborg, did not respond to phone calls asking for comment.

In the OCR's final determination of the case, dated September 30, they decided to "take no further action" on four of the five allegations Kaplan made against The New School. Yet they did rule with Kaplan on one allegation — that the university's sexual assault policy at the time of her case was not "equitable," as it only afforded the accused party the opportunity to appeal the outcome of the case, and not the accuser. The ruling resulted in the signing of a resolution agreement between the OCR and The New School, which was also dated September 30. By October 15, the university was required to inform

Kaplan of her right to a fair appeal.

On October 11, The New School informed Kaplan that she had the right to appeal her case. But by that point, Kaplan's alleged assaulter had transferred out of The New School, and the stress of a nearly nine-month ordeal had taken its toll. She chose not to pursue any further action.

"Would it be worth continuing a fight that [would be] completely symbolic?" Kaplan asked. "I want to move on."

The Kaplan case sheds a light on the significant shortcomings of The New School's previous sexual assault policy, which was discarded this year in favor of a new, revised policy implemented in time for the Fall 2011 semester.

The university declined to comment on any facet of Kaplan's case or the deliberations carried out between OCR and The New School, citing confidentiality guidelines for dealing with student disciplinary proceedings. But Sen-

clear and specific procedures for reporting acts of sexual violence on campus; and a vague description of the disciplinary panel charged with examining and delivering a ruling on assault cases at the university, as well as the panel's qualifications for handling a sexual assault case.

"A policy sends a message to the university community about how seriously they're going to take sexual assault," said Erica Rotman, a SAFER mentoring coordinator. "When you have things in your sexual assault policy such as a consent definition, and resources where people can seek services after being sexually assaulted — a really well-thought out document — it sends a message to the university community that sexual assault is something that The New School isn't going to tolerate."

The new policy was passed by the university's board of trustees in April, meaning that it would be in effect by the beginning of the 2011-12 academic year. But Kaplan's case was entirely adjudicated under The New School's previous policy, meaning that it was subject to two particular provisions that were not even mentioned

cause one person should not be the deciding factor. It doesn't mean that someone doesn't make a very thoughtful and careful assessment of the situation, but it's a lot of weight to have on one person's shoulders."

The new assault policy mandates that a disciplinary panel, consisting of five members chosen from a nine-person pool of students, faculty, and staff, must deliberate every sexual assault case that reaches adjudication. It also states that all panel members must be specifically trained to handle cases of sexual assault. Such provisions were absent from the old policy.

In the Office for Civil Rights' final ruling, sent to Kaplan on September 30, it was recognized that under The New School's revised sexual assault policy, both "the accuser and the accused have the right to appeal the decision of the hearing panel." However, the determination also acknowledged that "the complainant filed her complaint with the university under the

•There were no clear or specific details on the composition of the university panel meant to oversee disciplinary hearings, other than the mention that "Complaints against a student member of the university community will be reviewed and adjudicated using the Non-Academic Disciplinary Procedures outlined in the University Student Code of Conduct."

•Under the previous policy, the accused student — and only the accused student — in a sexual assault case had the right to waive a hearing with the disciplinary panel. Instead, they could meet with a university administrator, who would decide the outcome of the case. This was a right that was not given to the accusing party. The administrator in question would normally be Tom McDonald, assistant vice president for student and campus life. This provision was never written in the actual sexual assault policy.

•Under the previous policy, only the accused student in a sexual assault case had the right to appeal the university's final decision on the case; a right that also was not granted to the accuser. This provision was also never written or explained in the actual sexual assault policy. It formed the basis for the Office for Civil Rights' ruling on September 30 that The New School had to grant Jennifer Kaplan the right to appeal her case under its new sexual assault policy, as she was not afforded the opportunity to do so under the old one.

Old Policy

New Policy

•Under the new sexual assault policy, there are nine members of the university disciplinary panel that deals with sexual assault and code of conduct violations. Three students, chosen by the USS; three faculty administrators, chosen by the Provost's office; and three staff members, chosen by Linda Reimer, senior vice president for student services.

•Out of those nine members, five are chosen to be on the panel every time it convenes, with at least one student, one faculty, and one staff member serving. The panel convenes every time a sexual assault case is brought forth for adjudication by the university, without exception.

•The policy states that "Members of the panel will be trained prior to panel hearings on sexual assault, its impact, and other information appropriate to this type of panel hearing. The Assistant Vice President for Student and Campus Life facilitates the hearing but does not weigh in on determining responsibility or sanctions."

•The policy states that "The accuser and the accused have the right to appeal the decision of the hearing panel," adding that "two things should be considered as grounds for an appeal: (i) clear and specific demonstration of being denied a fair review, and (ii) flagrant discrepancy between the infraction and the imposed sanctions."

ior Vice President of Student Services. Linda Reimer confirmed that under the old sexual assault policy, only one side of the case was allowed to appeal its final outcome.

"In the old policy, [only] the accused could appeal," Reimer said. "In the new policy, both the accuser and the accused each have a right to appeal the decision. That was not the case in the past. So that's a big change, and it evens out the playing field."

Tom McDonald, assistant vice president for student and campus life, also confirmed that this was a condition under the previous assault policy. McDonald added that the reforms implemented by the new policy attempted to create a more balanced disciplinary process.

"It just seemed [a question] of fairness," McDonald said. "Generally, one or the other is going to be dissatisfied with the outcome. So both should be given the opportunity [to appeal], if they feel in any way that the hearing wasn't handled appropriately."

The new policy was the result of a collaborative effort between members of the student group the Feminist Collective and administrators at Student Services. With help from Students Active for Ending Rape (SAFER), an all-volunteer organization that helps initiate student-led campaigns to reform college sexual assault policies, the Feminist Collective determined several areas of the university's previous sexual assault policy that they considered flawed and in need of improvement.

Those areas included the absence of a specific definition of sexual consent; the lack of

in the written document itself.

Besides the fact that the right to appeal the university's decision in a sexual assault case was only held by the accused, Kaplan's alleged assaulter also had the right to waive a university disciplinary panel hearing altogether, and instead have his case heard by a single administrator — a right he exercised. It was also a right which Kaplan herself, as the accuser, was denied under the policy.

"They could have potentially [heard the case before a panel], but determining if Tom McDonald decided the whole case alone, or a disciplinary panel, was completely up to [the accused]," Kaplan explained.

While declining to comment specifically on the Kaplan case, both McDonald and Reimer confirmed that the accused's right to waive a disciplinary panel hearing was part of the university's protocol for handling such cases under the previous sexual assault policy. Both added that the university's new assault policy provides a much more balanced and thorough method for investigating reported sexual misconduct on campus.

"Previously, the student accused could waive the [disciplinary] panel and could have the adjudication done by one person, which turned out to be me," McDonald told the *Free Press*. "It's a big responsibility for one person — and given the seriousness of the allegations, I feel a panel is more appropriate."

"Now, the panel meets automatically in cases where there is an accusation of sexual assault," Reimer said. "And that's really important, be-

previous policy for handling such complaints and was not afforded the opportunity to appeal the decision."

It confirmed the allegation that The New School's previous sexual assault policy was, in part, not "equitable" under Title IX regulations, and proved the basis for the OCR's determination that the university would have to provide Kaplan the opportunity to appeal her case.

The Department of Education's "Dear Colleague" letter, released on April 4, represented a re-emphasis on Title IX regulations and a shift to a more progressive standard for dealing with sexual assault on campus. Under the guidelines, universities now "must use a preponderance of the evidence standard," when deliberating a case of sexual assault — meaning that "it is more likely than not that sexual harassment or violence occurred," according to the letter. The "Dear Colleague" letter cited a 2007 Justice Department statistic claiming that 20% of young women who attend college "will be victims of attempted or actual sexual assault."

McDonald said that The New School's revised sexual assault policy succeeded in ensuring the university's standards for handling sexual assault were on par with federal guidelines.

"We were actually in full compliance with the suggestions of the 'Dear Colleague' letter," McDonald said. "What the Feminist Collective presented was in line with Title IX regulations, and what we developed was in line with Title IX regulations. When the Title IX letter came out, I think it supported all of our efforts, as opposed to catching us by surprise."